

**Southwestern Water Conservation District &  
Colorado River Water Conservation District  
Joint Meeting of the Board of Directors  
Montrose, CO    September 18, 2014**

**SWCD Board Present:** John Porter, President (Montezuma)    Steve Fearn, Vice President (San Juan)  
Preston Goetzke (Hinsdale)    Rusty Hinger (Mineral)  
Jenny Russell (San Miguel)    John Taylor, Emeritus (Hinsdale)  
Robert Wolff (La Plata)

**SWCD Board Absent:** J.R. Ford (Archuleta)    Fred Kroeger, Emeritus (La Plata)  
Monte Naslund (Montrose)    Doug Stowe (Dolores)

**CRWCD Board Present:** James Newberry, President (Grand)    Jon Stavney, Vice President (Eagle)  
Tom Alvey (Delta)    John Ely (Pitkin)  
Rebie Hazard (Saguache)    John Justman (Mesa)  
Steve Mathis (Montrose)    David Merritt (Garfield)  
Doug Monger (Routt)    Andrew Mueller (Ouray)  
Bill Trampe (Gunnison)    Stan Winnery (Hinsdale)

**CRWCD Board Absent:** Tom Gray (Moffat)    Gary Martinez (Summit)  
Kai Turner (Rio Blanco)

**SWCD Staff Present:** Bruce Whitehead, Executive Director  
Steve Harris, Harris Water Engineering  
Adam Reeves, Maynes, Bradford, Shipps & Sheftel (MBSS)  
Laura Spann, Office Manager

**CRWCD Staff Present:** Eric Kuhn, General Manager  
Dan Birch, Deputy General Manager  
Peter Fleming, General Counsel  
John Currier, Chief Engineer  
Chris Treese, External Affairs Manager  
Jason Turner, Senior Counsel  
Audrey Turner, Administrative Chief  
Mary Kalmes, Chief Accountant  
Ian Philips, Accountant  
Dave Kanzer, Senior Water Resources Engineer  
Hunter Causey, Water Resources Engineer  
Laurie DePaolo, Executive Assistant  
Denise Hussain, Records Administrator/Information Specialist

**Guests:** Marc Catlin, Montrose County  
Ryan Christiansen, U.S. Bureau of Reclamation (USBR)  
Ken Curtis, Dolores Water Conservancy District  
Cary Dennison, Trout Unlimited  
Cindy Dozier, Hinsdale County Commissioner  
Frank Kugel, Upper Gunnison River Water Conservancy District  
John McClow, Upper Colorado River Commission  
Dennis Mitchel, Tri-County 9/12 Tea Party  
Bill Nesbitt, Gunnison  
Mike Preston, Dolores Water Conservancy District  
Steve Schlock, No Chico Brush Group

SWCD Board President John Porter and CRWCD Board President James Newberry called the meeting to order at 1:00 p.m. Roll was taken and a quorum was present.

## 1. Introduction by Board Presidents

### a. Goals of the Meeting

(time: 00:00:15)

James Newberry and John Porter welcomed both boards and the public to the meeting. Introductions were made.

### b. District Activities and Updates by Eric Kuhn & Bruce Whitehead

(time: 00:03:55)

Bruce Whitehead, SWCD Executive Director, provided an overview of the 2014 water year in southwestern Colorado and recent board activities including Water Bank Working Group, weather modification program, and the Animas-La Plata water rights. Eric Kuhn, CRWCD General Manager, reported on participation in the Compact Water Bank Workgroup as well as the contingency plan process, the ongoing implementation of the Colorado River Cooperative Agreement with Denver Water, and completion of the Windy Gap Firming Project IGA.

## 2. Basin States Contingency Plan Update

(time: 00:29:55)

Eric Kuhn provided background on the contingency plan being developed by the seven Colorado River basin states and the U.S. Bureau of Reclamation to avoid the unacceptable consequences to water users basin-wide if the current drought continues.

Three general principles for contingency planning were proposed for consideration by both boards:

1. There are three elements of the plan in the Upper Basin: augmentation (additional cloud seeding and removal of non-native riparian trees), extended operations of the upstream Colorado River Storage Project reservoirs (Flaming Gorge, Aspinall and Navajo), and demand management. Demand management should only be used when absolutely necessary and essential to maintain the storage level in Lake Powell above minimum power;
2. When demand management is necessary, all sectors that consumptively use Colorado River Water need to contribute *water*. The burden cannot fall exclusively on West Slope agriculture; and
3. The contingency plan will only succeed if the states of the Lower Division (California, Arizona, and Nevada) enact conservation measures to reduce their total consumptive use of Colorado River water.

John McClow, Commissioner for Colorado on the Upper Colorado River Commission, added that the Upper Colorado River Commission adopted similar principles, with the exception of specifying the West Slope. There was significant discussion. There was consensus to clarify the principles to state that should demand management be necessary, all sectors using Colorado River Water need to contribute with water, not just financially.

### SWCD

Steve Fearn moved to adopted these three contingency planning principles with the clarification in red italics. Bob Wolff seconded. There was discussion. The motion passed.

### CRWCD

Bill Trampe made the same motion. Steve Mathis seconded. There was discussion. The motion passed.

The principles were adopted by both SWCD and CRWCD.

## 3. Status and Future of Compact Water Bank

### a. System Conservation Program

(time: 01:04:20)

Eric Kuhn described the formation of the Water Bank Work Group, a proactive effort to avoid the buy and dry of West Slope agriculture to meet increasing demands on the Colorado River. Separately, he summarized the Colorado River System Conservation Agreement (SCA), of which \$8.25 million is designated for pilot projects in the Lower Basin, and \$2.75 million is designated for the Upper Basin.

Two principles for the SCA were proposed for consideration by both boards:

1. Any pilot project funded by the SCA impacting West Slope agriculture needs *to be conducted in coordination with to be conducted through* the water bank; and
2. Pilot projects funded by the SCA need to include projects on the East and West Slopes and not solely focus on agriculture.

There was significant discussion about the potential benefits and detriments of SCA funding being funneled to demand management pilot projects through the Water Bank Work Group.

#### **SWCD**

Steve Fearn moved to adopt the two SCA principles with the above change in red italics. Rusty Hinger seconded. The motion passed.

#### **CRWCD**

Andy Mueller made the same motion. Stan Winnery seconded. The motion passed 11 to 1.

#### **b. Pre-1922 Historic Consumptive Uses**

(time: 01:37:50)

John Currier, CRWCD Chief Engineer, presented the topic of a pilot pre-compact west slope water bank (or "compact augmentation plan"), which would store excess, decreed pre-compact historic consumptive use credits that are currently not allocated to specific uses. In the event of a compact call, the water would be delivered as a replacement supply to cover post-compact critical West Slope depletions. John responded to questions, and there was discussion. There was consensus to further pursue a "compact augmentation plan."

### **4. West Slope Basin Implementation Plans: Common Issues & Interests**

#### **a. Water Conservation Measures**

(time: 01:50:15)

Bruce Whitehead and Steve Harris provided background on SB14-017 (Lawn Irrigation Limitations), in addition to statewide conservation goals adopted by the Southwest Basin Roundtable (SWBRT), summarized here:

1. The first SWBRT conservation goal is to change the ratio of in-house to outside treated water use for municipal and domestic water systems from the current ratio of 50/50 to 60/40 for southwest Colorado and the entire State by 2030.
2. Water providers proposing a new TMD shall achieve a 60/40 ratio by 2020 and 70/30 by 2030 (high conservation) as a prerequisite for the SWBRT to consider support of a new TMD.

There was discussion. Chris Treese, CRWCD, will participate in a facilitated workgroup to develop recommendations to address water conservation.

#### **b. Transmountain Diversions/IBCC Draft Proposal**

(time: 02:11:50)

Eric Kuhn and Bruce Whitehead summarized the seven points identified for a conceptual agreement for future negotiations on a potential new transmountain diversion (TMD):

1. The East Slope is not looking for firm yield from a new TMD project and would accept hydrologic risk for that project;
2. A new TMD project would be used conjunctively with East Slope interruptible supply agreements, Denver Basin Aquifer resources, carry-over storage, terminal storage, drought restriction savings, and other non-West Slope water sources;
3. In order to manage when a new TMD will be able to divert, triggers are needed;
4. An insurance policy that protects against involuntary curtailment is needed for existing uses and some reasonable increment of future development in the Colorado River system, but it will not cover a new TMD;
5. Future West Slope needs should be accommodated as part of a new TMD project;

6. Colorado will continue its commitment to improve conservation and reuse; and,
7. Environmental resiliency and recreational needs must be addressed both before and conjunctively with a new TMD.

These seven points were agreed upon by the Interbasin Compact Committee (IBCC) and distributed in a draft conceptual agreement dated July 1, 2014. Since then, the IBCC has not held a meeting. Separately, the Colorado River Basin Roundtable has adopted similar criteria to that developed by the Southwest Basins Roundtable for considering TMDs. Eric Kuhn proposed that the four West Slope Roundtables meet to discuss the TMD conceptual agreement.

### **c. Consistency & Definition of Non-Consumptive Data Needs**

*(time: 02:17:50)*

The Southwest Basin Roundtable has discussed the need for tools to quantify non-consumptive needs. Representatives present from the four West Slope Roundtables reported on their Roundtables' methods for quantifying and defining non-consumptive issues, including the watershed evaluation tool and the whitewater analysis.

### **d. State Sovereignty Water Issues**

*(time: 02:22:55)*

Bruce Whitehead provided the language in the final draft Southwest Basin Implementation Plan regarding the interaction of state and federal water policy. Mike Preston, Southwest Basin Roundtable Chairperson, reported on the most recent Water Resources Review Committee public hearing held in Durango on August 27 regarding the Colorado Water Plan. The public expressed concerns at the hearing about the role of federal water policy and how the prior appropriation doctrine will interact with the Colorado Water Plan.

### **e. Joint Meeting Among the Four West Slope Roundtables**

*(time: 02:29:40)*

There was general consensus to hold a joint meeting among the four West Slope Roundtables.

## **5. Federal and State Issues**

### **a. Discussion of Federal Issues**

#### **i. USFS/BLM Joint Management Plan (San Juan Forest – Tres Rios Office)**

*(time: 02:30:35)*

Bruce Whitehead and Mike Preston, Dolores Water Conservancy District, provided background on the U.S. Forest Service (USFS) and Bureau of Land Management (BLM) Joint Land and Management Plan for the San Juan National Forest. SWCD filed a protest to the BLM portion of the joint plan, and an appeal to the USFS portion of the plan. SWCD's main concerns have been the restrictive bypass standards and two newly identified Outstandingly Remarkable Values (ORVs) on the Dolores River. USFS has denied SWCD's appeal, as well as the requests for discretionary review to the Secretary of Agriculture. The USFS portion of the joint plan has already gone to a Record of Decision (ROD). The BLM portion of the joint plan will go to a ROD by the end of the calendar year. The MOUs with the USFS and BLM encouraged use of state programs such as Instream Flows as an alternative to mandates of federal bypass flows. These recent policy shifts by the federal agencies appear to give them "two bites of the apple," which was not the intent of the MOUs. There was discussion.

#### **ii. USFS Groundwater Directive**

*(time: 02:47:30)*

The USFS proposed groundwater directive would add a chapter to the USFS manual providing guidance to agency personnel regarding what information is needed and what conditions may be imposed when a new or renewed authorization to use groundwater on national forest system lands is requested. Peter Fleming, CRWCD General Counsel, reported that the River District chose not to submit comments on the USFS proposed groundwater directive, because the suggested changes were thought to be consistent with Colorado water law and CRWCD's interests. Adam Reeves, Maynes, Bradford, Shipp & Sheftel, reported that SWCD submitted comments which emphasize limitations on USFS authority to impose conditions that interfere with state authority or with the rights of water appropriators under state law, request that the USFS remove any directives that establish a policy to discourage the use of groundwater resources on National Forest System lands by the public, and detail concerns with the misleading manner in which the USFS has characterized the impacts and intent of the proposed directive.

**iii. USFS Ski Area Water Rights Directive**

The USFS sought public comment prior to August 22 on a proposal addressing water provided for ski areas on national forest lands through the permitting process. Peter Fleming reported that CRWCD submitted comments balancing corporate, water rights owners, and community interests. Adam Reeves summarized SWCD's general comments, and the concern that the USFS would determine how a Colorado water right would be perpetually used.

**iv. EPA Rule "Waters of the U.S."***(time: 02:58:45)*

Adam Reeves reported on the EPA's proposed rule to clarify the agency's "Waters of the U.S." definition; public comments are due before October 20. The issue has been vastly overblown in the media. SWCD's comments will address the ways in which the new definition does not take into account hydrologic conditions in the Western U.S. Peter Fleming commented that enabling legislation is to blame for a lack of clarity regarding "Waters of the U.S." and the USFS is trying to resolve that. There was discussion.

**b. 2015 Legislative Session Outlook****iv. Agriculture Efficiency***(time: 03:04:30)*

Chris Treese, CRWCD External Affairs Manager, reported on possible 2015 legislation that would create a pilot program which is consistent with discussions around SB14-023 (Ag Efficiency). Bruce Whitehead provided background on SB14-023, which was vetoed by Governor Hickenlooper.

**i. Future Use Allocation (FUA) ISF Appropriations***(time: 03:11:00)*

John Porter directed the boards to SWCD Resolution 13-05 adopted in December 2013, which states that "when instream flow appropriations are contemplated in the lower reaches of rivers or near a state line, Colorado Water Conservation Board be required to evaluate potential future demands, and initiate an appropriation and filing for a 'reasonable' future use allocation senior to the instream flow appropriation, in order to safeguard consumable water supplies to serve those future needs." SWCD is considering the development of legislation to that effect. Jenny Russell opposed the proposed "future use allocation" as inconsistent with the prior appropriation doctrine and unnecessary.

**ii. Limitation Federal Bypass – Special Use Permit Conditions***(time: 03:18:10)*

Bruce Whitehead proposed that the instream flow program could be limited through state legislation when there is a federal bypass along the same river reach to prevent "double dipping" by federal agencies.

**iii. Land Use and Water Supplies**

This topic was addressed generally in agenda item 4 (a).

**v. Ad Hoc Group Discussion of Legislation, re: Changes of Water Rights***(time: 03:19:15)*

Peter Fleming will be meeting with a group including the State Engineer and legal professionals to discuss proposed legislation regarding changes of water rights and the requirement by the Division of Water Resources to re-quantify historic consumptive use (HCU) in a change case. The State Engineers current interpretation of the statutes and case law is that years of non-use should be taken into account in the change of water right, even if the HCU had been quantified in a previous action by the court. The group will be proposing legislation to limit this re-quantification requirement. The ad-hoc group would also like to tie in other legal issues to the legislation.

**c. Recovery Plans – Non-Native Fish Removal***(time: 03:27:00)*

Bruce Whitehead and Steve Harris, Harris Water Engineering, reported on the August 12 meeting with participants in the San Juan River Basin and the Upper Colorado River Recovery Programs, as well as representatives from across the state met with Mike King, Colorado Department of Natural Resources (DNR) Executive Director, to propose a "must kill" order for non-native species. Agencies, including Colorado Parks & Wildlife, are reluctant to impose a "must kill" order, but may consider a pilot program to ensure that the order would have biological benefits. These non-native species such as northern pike and small mouth bass are known to feed on the endangered species that are the focus of the two Recovery Programs. If the species do not recover, there are significant consequences to water users.

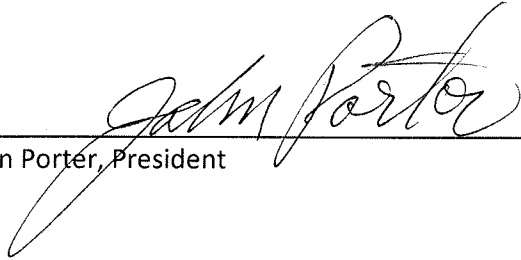
## 6. Mutual Interests & Cooperative Efforts

Board presidents thanked the audience and expressed gratitude for cooperation between the two districts.

### Adjournment

Presidents James Newberry and John Porter adjourned the meeting at 4:45 p.m.

John Porter, President

A handwritten signature in cursive script, reading "John Porter", is written over a horizontal line. The signature is fluid and extends above and below the line.